
In the Supreme Court of Missouri

Cause No.

84659

STATE ex rel. KATHLEEN DIEHL,

Relator,

v.

HONORABLE JOHN R. O'MALLEY
Judge, Division 6,
Circuit Court of Jackson County, Missouri,

Respondent.

BRIEF OF RELATOR

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BRIEF OF RELATOR

JURISDICTIONAL STATEMENT

This is an original action in prohibition seeking to prohibit Respondent circuit judge from continuing in his denial of Relator's motion for jury trial in a case arising under the Missouri Human Rights Act where money damages is the only relief sought. Pursuant to Article V, Section 4 of the Constitution of the State of Missouri of 1945, as amended, the Supreme Court has superintending jurisdiction over all inferior courts, including the jurisdiction to issue and determine original remedial writs.

STATEMENT OF FACTS

On October 25, 2001, Relator Kathleen Diehl filed a petition against defendant, alleging that defendant violated the Missouri Human Rights Act by discriminating against plaintiff on the basis of her age, sex and in retaliation for her having filed a charge of discrimination. [Exhibit A to Exhibit B to Relator's Petition for Writ of Prohibition, ¶ 16]. On January 15, 2002, Relator filed her First Amended Petition against defendant. [Exhibit B to Exhibit B to Relator's Petition for Writ of Prohibition]. Both the Petition and the First Amended Petition seek money damages only. [Exhibits A and B to Relator's Petition for Writ of Prohibition, ¶ 15 and *ad damnum* clause].

On March 11, 2002, plaintiff filed a Motion for Jury Trial with the trial court. [Petition for Writ of Prohibition, ¶4; Admitted in Respondent's Answer, ¶4]. Respondent denied the motion on March 28, 2002, citing ***Wentz v. Industrial Automation***, 847 S.W.2d 877, 879 (Mo.App. E.D. 1992), a decision that follows ***State ex rel. Tolbert v. Sweeney***, 828 S.W.2d 929 (Mo. App. S.D. 1992). [Exhibit A to Relator's Petition for Writ of Prohibition]. On August 27, 2002, this Court entered its Preliminary Writ of Prohibition, ordering Respondent to show cause why a writ of prohibition should not issue ordering him to vacate his order of March 25, 2002, and in lieu thereof, to sustain said motion.

POINT RELIED ON AND AUTHORITIES

RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM DENYING RELATOR'S MOTION FOR JURY TRIAL BECAUSE THE MISSOURI CONSTITUTION GUARANTEES THE RIGHT TO A TRIAL BY JURY AS IT EXISTED AT COMMON LAW AT THE ADOPTION OF THE FIRST CONSTITUTION IN 1820, INCLUDING FOR CAUSES OF ACTION SUBSEQUENTLY CREATED BY STATUTE THAT ARE ANALOGOUS TO ACTIONS THAT WERE THEN TRIABLE TO A JURY AT COMMON LAW, IN THAT PLAINTIFF'S CLAIM SEEKING MONEY DAMAGES ONLY, IN REDRESS OF DEFENDANT'S VIOLATION OF HER RIGHTS UNDER THE MISSOURI HUMAN RIGHTS ACT, IS ANALOGOUS TO THOSE ACTIONS THAT WERE TRIABLE TO A JURY AT THE TIME OF THE ADOPTION OF THE FIRST CONSTITUTION.

Bates v. Comstock Realty Co., 267 S.W. 641, Mo. 312 (1924)

Briggs v. St. Louis & San Francisco Railway Co., 20 S.W. 32, 111 Mo. 168 (1892)

Hammons v. Ehney, 924 S.W.2d 843, 849 (Mo. banc 1996)

Lee v. Conran, 111 S.W. 1151, 213 Mo. 404 (Mo. 1908)

Article I, Section 22(a), of the Constitution of 1945 of the State of Missouri

R.S.Mo. §213.111

ARGUMENT

RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM DENYING RELATOR’S MOTION FOR JURY TRIAL BECAUSE THE MISSOURI CONSTITUTION GUARANTEES THE RIGHT TO A TRIAL BY JURY AS IT EXISTED AT COMMON LAW AT THE ADOPTION OF THE FIRST CONSTITUTION IN 1820, INCLUDING FOR CAUSES OF ACTION SUBSEQUENTLY CREATED BY STATUTE THAT ARE ANALOGOUS TO ACTIONS THAT WERE THEN TRIABLE TO A JURY AT COMMON LAW, IN THAT PLAINTIFF’S CLAIM SEEKING MONEY DAMAGES ONLY, IN REDRESS OF DEFENDANT’S VIOLATION OF HER RIGHTS UNDER THE MISSOURI HUMAN RIGHTS ACT, IS ANALOGOUS TO THOSE ACTIONS THAT WERE TRIABLE TO A JURY AT THE TIME OF THE ADOPTION OF THE FIRST CONSTITUTION.

A. PROHIBITION IS THE APPROPRIATE REMEDY FOR IMPROPER DENIAL OF THE RIGHT TO TRIAL BY JURY

Prohibition is the appropriate remedy where the right to a jury trial is improperly denied since such a denial is necessarily an act outside of the trial court’s jurisdiction. *State ex rel. Estill v. Iannone*, 687 S.W.2d 172, 175 (Mo. 1985).

B. THE CONSTITUTION GUARANTEES THE RIGHT TO TRIAL BY JURY IN LEGAL ACTIONS SEEKING ONLY MONEY DAMAGES

Article I, Section 22(a) of the Constitution of 1945 of the State of Missouri, guarantees “[t]hat the right of trial by jury as heretofore enjoyed shall remain inviolate. . .

.”

This Court has stated multiple times that the right to jury trial protected by the present constitution is that which “existed at common law before the adoption of the first constitution, in 1820.” *Hammons v. Ehney*, 924 S.W.2d 843, 849 (Mo. banc 1996).

Normally when distinguishing between legal and equitable actions one looks to the remedy requested. *Hammons*, 924 S.W.2d at 846. Actions seeking money damages are generally legal in nature and thus fall within the scope of the constitutional guarantee of the right to trial by jury. *Jaycox v. Brune*, 434 S.W.2d 539, 542-43 (Mo. 1968).

The constitutional right to a trial by jury is implied in all cases in which an issue of fact, in an action for the recovery of money only, is involved, whether the right or liability is one at common law or is one created by statute. *Briggs v. St. Louis & San Francisco Railway Co.*, 20 S.W. 32, 33, 111 Mo. 168 (1892). The Constitution guarantees the right to a jury trial in an action enforcing a right created by a statute even though the statute was enacted after 1820. In 1892, this Court, in *Briggs*, held that the Constitution guaranteed the right to trial by jury on a claim seeking attorney fees under a statute passed in 1885 – a statute obviously not in existence at the adoption of either the Constitution of 1820 or the Constitution of 1875. *Id.*

Following *Briggs*, this Court in *Lee v. Conran*, 111 S.W. 1151, 1153, 213 Mo. 404 (Mo. 1908), reiterated and reaffirmed that the constitutional guarantee of the right to trial by jury “means that all the substantial incidents and consequences, which pertained to the right of trial by jury, are beyond the reach of hostile legislation, and are preserved

in their ancient substantial extent as existed at common law.” *Lee* explains further:

In order to determine whether the case at bar comes within the meaning of that section of the Constitution as interpreted by those adjudications, we must first determine what *the issue tendered by the pleadings* is, and, after doing so, we must then ascertain how that issue was triable before the adoption of that constitutional provision; if by jury, then either party is entitled to a trial of that issue by a jury, *regardless of any statutory provision*, but if it was not triable by jury prior to that time, then the Constitution does not govern, and we would then look to the statutes and the common law for a rule by which to solve the question.

Id. (Emphasis added). Thus, it is *the issue tendered by the pleadings* that controls whether the constitutional right to trial by jury attaches, not *any statutory provision*, such as relief potentially available under the statute that is not sought by either party. The issue tendered by the pleadings in this case is defendant’s liability to plaintiff for actual and punitive damages due to defendant having breached a duty owed by defendant to plaintiff pursuant to the Missouri Human Rights Act.

Similarly, in *Bates v. Comstock Realty Co.*, 267 S.W. 641, 306 Mo. 312 (1924), this Court again held, as it had in *Briggs*, that the constitutional right to a jury trial exists even though the action has been statutorily created, so long as the action is analogous to an action at common law rather than one in equity:

It is argued by respondent that as actions on special tax bills were unknown

at common law there is no common law right of trial by jury preserved inviolate by section 28, art. 2, of the Constitution. The construction of that provision as implied in the argument is, we think, too narrow. The right of trial by jury as it existed at common law may well include the right to such a trial not only in common law action, so called, but those of like nature in which that mode of trial is appropriate. [Citations omitted]. The question then resolves itself into whether the proceeding for the collection of special tax bills is analogous to an action at common law, or whether it is in the nature of a suit in equity.

Bates, 267 S.W. at 644, 306 Mo. at 328. This action to recover actual and punitive damages for breach of a duty is clearly analogous to an action at common law and not to a suit in equity.

C. BECAUSE PLAINTIFF’S PETITION SEEKS ONLY MONEY DAMAGES, THE MISSOURI CONSTITUTION GUARANTEES PLAINTIFF A RIGHT TO TRIAL BY JURY ON HER CLAIM UNDER THE MISSOURI HUMAN RIGHTS ACT.

As noted above, plaintiff has made no claims that invoke the equity jurisdiction of the trial court; the only relief sought by plaintiff is money damages. Because the equity jurisdiction of the trial court has never been invoked, the trial court cannot claim to be acting pursuant to the exception that allows equity to “retain jurisdiction of a cause once

it has acquired it in order to afford full relief.” *State ex rel. Willman v. Sloan*, 574 S.W.2d 421, 422 (Mo. 1978). To the contrary, because the only “the issue tendered by the pleadings” is purely legal, the Constitutional right to trial by jury attaches. *Lee v. Conran*, 111 S.W. 1151, 1153, 213 Mo. 404 (Mo. 1908).

D. STATE EX REL. TOLBERT V. SWEENEY WAS WRONGLY DECIDED

The respondent circuit court judge denied Relator’s motion for a jury trial, relying on *Wentz v. Industrial Automation*, 847 S.W.2d 877, 879 (Mo.App. E.D. 1992), a decision that follows *State ex rel. Tolbert v. Sweeney*, 828 S.W.2d 929 (Mo. App. S.D. 1992).

In *State ex rel. Tolbert v. Sweeney*, the Southern District held that a party has no constitutional right to trial by jury in a circuit court action for damages only filed under the Missouri Human Rights Act. *Id.* at 932. The *Sweeney* court’s conclusion that persons seeking exclusively money damages in redress of their rights under the Missouri Human Rights Act have no *constitutional* right to trial by jury is repugnant to numerous decisions of this Court that have consistently acknowledged and guarded the inviolate constitutional right to a jury trial in legal actions seeking money damages. *See, e.g., Meadowbrook Country Club v. Davis*, 421 S.W.2d 769, 774 (Mo. banc 1967)(where “only relief sought . . . was the recovery of a money judgment . . . it was an action at law and, therefore, fell within the scope of the constitutional guarantee of the right of trial by jury”); *Rush v. Brown*, 14 S.W. 735, 736, 101 Mo. 586 (Mo. 1890)(“by the terms of the

constitution, (Const. 1875, Art. 2, § 28,) the right of trial by jury is preserved inviolable in ordinary cases, ‘for the recovery of money only’’).

In reaching its conclusion, the *Sweeney* court erroneously relied on two previous decisions in which courts had held that there was no right to a jury trial in purely administrative proceedings. The *Sweeney* court began its constitutional analysis by citing the Eastern District’s decision in *State ex rel. Missouri Commission on Human Rights v. Lasky*, 622 S.W.2d 762 (Mo. App. 1981). *Lasky* involved an appeal to the circuit court from a finding of discrimination made in an administrative proceeding by the Missouri Commission on Human Rights under the predecessor to the current Human Rights Act. The trial judge intended to have a jury review the administrative finding and the Commission sought prohibition to prevent him from doing so. *Lasky* held that an administrative body investigating complaints of discrimination and issuing orders of correction was “unknown to the common law” such that the right to have a jury decide an appeal therefrom was not “heretofore enjoyed.” 622 S.W.2d at 763. *Lasky* further reasoned that the Commission’s powers under the statute were similar to those exercised by a court of equity, correctly observing that cases in equity were never tried to a jury. *Id.*

Sweeney acknowledged that *Lasky* was not controlling because the claim before the court in *Sweeney* was not an appeal from an administrative decision, but a claim for money damages brought in a civil action under §213.111 of the current Human Rights

Act. 622 S.W.2d at 933. However, *Sweeney* postulated that a broader principle was announced in *Lasky* — because Chapter 213 did not exist in 1945, the right to jury trial in suits seeking solely money damages thereunder “was not ‘heretofore enjoyed.’” *Id.* *Sweeney* categorically announced that “to now find a constitutional right to a jury trial is antagonistic to *Lasky*.” *Id.* To the extent that such a principle was announced in *Lasky*, the decision is contrary to numerous decisions of this Court, including the Court’s decisions in *Briggs*, *Lee* and *Bates*. In fact, this Court has already repudiated this aspect of the holdings of *Lasky* and *Sweeney*:

“As to this issue, the decisions of this Court, not *Lasky* or *Sweeney* control.”

Hammons v. Ehney, 924 S.W. 2d 843, 848 (Mo. 1996).

The *Sweeney* court next relied on *DeMay v. Liberty Foundry Co.*, 327 Mo. 495, 37 S.W.2d 640 (Mo. 1931), which upheld the constitutionality of the Missouri Workers Compensation Act. With respect to the right to trial by jury, the Court in *DeMay* held only that there was no constitutional right to a jury trial in the statutorily created administrative board of arbitration that was established under the workers compensation statutes. 327 Mo. at 511, 37 S.W.2d at 648.

Despite the fact that both *DeMay* and *Lasky* concerned only the issue of a right to a jury trial in an administrative proceeding, the court in *Sweeney* somehow concluded that these decisions controlled as to whether the parties had a right to trial by jury in a

civil action for money damages filed in circuit court. In contrast to the proceedings filed under the Workers Compensation Act, over which the Labor and Industrial Relations Commission has exclusive jurisdiction and which supplant any action at law that might otherwise have existed, §213.111 of the Human Rights Act authorizes individuals to pursue civil actions seeking money damages in circuit court.¹ Because all legal actions

¹ It is noteworthy that just as the Human Rights Act includes a section (§213.111) creating a civil cause of action separate and apart from the administrative proceeding, so does the Worker's Compensation Act create a cause of action (§287.780) for retaliating against one who exercises his rights under the Workers Compensation law. Although the right to trial by jury is not mentioned in §287.780, none of the many cases involving

seeking money damages were tried to juries at the time of the adoption of the Constitution of 1820, the right to a trial by jury in a civil action seeking only money damages is guaranteed by the constitution, even though the claim arises under a statute subsequently adopted. *Briggs*, 111 Mo. at 168, 20 S.W. at 32.

The *Sweeney* court recognized that its interpretation of “*DeMay* . . . , relied upon by *Lasky*, seems contrary to *Briggs*.” 622 S.W.2d at 934. However, in attempting to reconcile the two decisions, *Sweeney* overlooked the unique underlying factors that caused this Court in *DeMay* to declare that there was no right to jury trial in a workers compensation proceeding. In particular, *Sweeney* failed to recognize the fundamental claims under §287.780 have suggested that the constitutional right to trial by jury does not attach, either because the statute was not in existence at the time the Constitution was adopted, or because the relief provided in Chapter 287 is predominantly equitable. *See, e.g., Hansome v. Northwestern Cooperage Co.*, 679 S.W.2d 273, 276 (Mo. 1984)(holding plaintiff “made a submissible case for the jury” under §287.780).

distinction between the *administrative* character of a workers compensation proceeding, and that of a *civil* action filed in a court of law to recover money damages under §213.111.

The *Sweeney* court also attempted to support its holding by observing that “the main thrust of the relief to be afforded by the court [under the Missouri Human Rights Act is] equitable in nature,” 828 S.W.2d at 935, even though the plaintiff there sought no such relief. Thus, *Sweeney* ignored the fundamental premise that the right to a trial by jury is dependent upon “the issue tendered by the pleadings,” *Lee*, 111 S.W. at 1153, just as whether an action is one at law or in equity – and thus whether a jury or a judge decides the case – depends on the nature of the relief sought in plaintiff’s petition.

Jaycox v. Brune, 434 S.W.2d 539, 542-43 (Mo. 1968) (where a count seeking equitable relief is dismissed leaving only a count seeking money damages, equity jurisdiction does not attach and plaintiff is entitled to a jury trial on the remaining legal claims); *Roberts v. Murray*, 232 S.W.2d 540, 541 (Mo. 1950)(where no affirmative equitable relief was prayed, the pleadings presented only issues at law and the action was not in equity, but at law).

To further support its conclusion, *Sweeney* also erroneously relied upon *State ex rel. Willman v. Sloan*, 574 S.W.2d 421, 422 (Mo. 1978). In *Sloan*, the relator’s original claim sought equitable relief in the form of an injunction, although he also asserted additional claims that would otherwise be characterized as legal had they been brought

alone. *Id.* The *Sloan* court simply applied the settled rule that once a court of equity acquires jurisdiction, it will retain jurisdiction and may even determine a claim for money damages where necessary to grant plaintiff full relief. *Id.* In so doing, the *Sloan* court reiterated the rule that an action is generally considered legal rather than equitable when the only relief sought is money damages, and acknowledged that to deny a party the right to trial by jury in such a case would violate Article I, Section 22(a) of the Missouri Constitution. *Id.* at 422, citing *Jaycox*, 434 S.W.2d at 542-543, and *Attebery v. Attebery*, 507 S.W.2d 87, 93 (Mo. App. 1974).

CONCLUSION

There is no question that an action seeking to recover money damages only was triable to a jury at common law. Therefore, the Constitution guarantees inviolate the right to jury trial “beyond the reach of hostile legislation,” *Lee v. Conran*, 111 S.W. at 1153, even with respect to claims created by statute since the adoption of the first constitution. *Briggs v. St. Louis & San Francisco Railway Co.*, 20 S.W. at 33; *Bates v. Comstock Realty Co.*, 267 S.W. at 644. The Preliminary Writ of Prohibition issued in this case should be made absolute.

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CERTIFICATE OF COMPLIANCE

I certify that:

1. The brief includes the information required by Supreme Court Rule 55.03;
2. The brief complies with the limitations contained in Supreme Court Rule 84.06(b); and
3. According to the Word Count Function of counsel's word processing software, the brief contains 3,543 words.

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CERTIFICATE OF SERVICE

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